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C O N F I D E N T I A L SECTION 01 OF 02 ABUJA 002103

SIPDIS

STATE FOR AF/W, INR/AA
DOE FOR GEORGE PERSON

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TAGS: PGOV NI
SUBJECT: NIGERIA: SUPREME COURT HEARD FINAL ARGUMENTS IN
BUHARI/ATIKU APPEAL - PART 2

REF: ABUJA 2091

Classified By: Political Counselor Walter Pflaumer for reasons 1.4. (b & d).

¶1. (C) SUMMARY. Final arguments in the appeals of Mohammadu Buhari (ANPP) and Atiku Abubakar against the Appeals Court ruling to uphold the April 2007 election of President Umaru Musa Yar'Adua concluded on October 23, with the Supreme Court reserving judgment for a later (unannounced) date. Both Buhari and Atiku's lead counsels laid out the basis for their appeals, making cogent presentations citing documentary evidence of foul play. Final arguments for the GON respondents were fairly brief and included claims that no election is perfect and no one was disenfranchised in the 2007 elections. This cable will outline some of the more specific arguments made and the lines of questioning of the Supreme Court justices. Reftel contains information on atmospherics and tone of the proceedings. END SUMMARY.

¶2. (SBU) Poloffs and PolAssistant attended the October 23 Supreme Court hearing of the final arguments in former General and head of state Mohammadu Buhari and former Vice President Atiku Abubakar's appeal of the electoral tribunal ruling upholding the April 2007 election of President Umaru Musa Yar'Adua. The justices reserved judgment sine die (i.e., said they would deliver their final ruling on a later, unspecified, date) in both cases. The courtroom was shoulder-to-shoulder with lawyers, supporters, onlookers and press. Buhari was present, as was Atiku's Vice Presidential running mate Senator Ben Obi, for the proceedings. Also present were PDP Chairman Prince Ogbulafor, PDP Secretary Abubakar Kwaru Baraje, former PDP Board of Trustees Chairman Tony Anenih, Minister of Labor and Acting Minister of Health Hassan Lawal, and a Minister of State for Communications. Minister of Foreign Affairs Ojo Maduekwe arrived about 20 minutes late but left as there was no place for him to sit. Poloffs and European Commission poloff were the only foreign mission representatives in attendance.

¶3. (C) Interestingly, the INEC legal team was not present in the courtroom. Kanu Agabi and Wole Olanipekun (both attorney's on Yar'Adua and Jonathan's legal team) represented INEC in the Buhari and Atiku cases, respectively. Buba Galadima of The Buhari Organization told Poloff on October 24 that Yar'Adua was concerned the INEC legal team would not make a strong presentation, so he assigned his own legal team

to make the closing arguments.

PRINCIPAL ARGUMENTS IN BUHARI'S APPEAL

¶4. (C) The chief lawyer on Buhari's legal team, Mike Ahamba, made an approximately hour-long presentation, laying out Buhari's appeal. Buhari's team submitted documentary evidence challenging the reported results in about 80,000 of the over 121,000 polling stations in the country. Ahamba maintained results sheets submitted (and certified as accurate by INEC) were inconsistent with the announced results in 28 out of 36 states. The mood throughout the presentation was relaxed and the rapport between Ahamba and the justices congenial and good-natured.

¶5. (C) Kanu Agabi, chief lawyer for President Yar'Adua and Vice President Jonathan, presented 15 minutes of closing arguments in which he maintained witness testimony must support documents in the court. Justice Niki Tobi called Agabi to task on this statement, noting that "documents speak for themselves under Nigerian law." Wole Olanipekun, representing INEC, announced that there was "no evidence of a single person who wanted to vote and was disenfranchised." The justices challenged Olanipekun on the issue of serial numbering of the ballots -- making him read to the court the relevant section of the Appeals Court verdict. Olanipekun argued that the numbering of the ballots was not substantial to the case, but the justices pointed out that no counter-appeal had been filed on this, and that new arguments could not be made in closing remarks. The mood was confrontational, with six of the seven justices grilling the

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lawyer on the issue of serial numbering.

PRINCIPAL ARGUMENTS IN ATIKU'S APPEAL

¶6. (C) Alfred Kasumu, chief counsel on Atiku's legal team, presented the final arguments in Atiku's appeal case, which centered on the exclusion of Atiku from the ballots and the absence of serial numbers on ballots. The respondents in Atiku's appeal chose not to repeat arguments made in Buhari's case earlier in the day, and the afternoon's presentations moved fairly quickly. An overall theme in the afternoon's responses from Yar'Adua's lawyers was that non-compliance with the Electoral Law is "presumed by law," and no election is perfect.

COMMENT

¶7. (C) Although the tone of the justices' interaction with the attorneys for the respondents was not as markedly confrontational in the afternoon as it was in the morning (reftel), it remained argumentative. The court is set to notify the appellants shortly of the date on which a decision can be expected. We will be watching closely and believe we may see some stage-setting in the next few days to prepare the Nigerian people for a possible verdict overturning the elections. End Comment.

¶8. (U) This cable was coordinated with Consulate Lagos.
Sanders